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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/444,144	11/20/99	HOWELL	M CYT0001
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HM12/0511

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EXAMINER

PATTEN, P

ART UNIT

PAPER NUMBER

1651

5

DATE MAILED: 05/11/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/444,144**

Applicant(s)  
**Howell et al.**

Examiner  
**Patricia Patten**

Group Art Unit  
**1651**



- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

- ☒ Claim(s) 1-49 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claims 1-49 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Election/Restriction*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-43, drawn to a method of stimulating an immune response in a mammal having a pathological condition, classified in class 424, subclass 139.1 for example.
- III. Claims 44-47 and 48-49, drawn to an apparatus for reducing the amount of a targeted immune system inhibitor in a biological fluid, classified in class 95, subclass 92 for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the method claims of Group I can be carried out without the apparatus of Group II.

Because these inventions are distinct for the reasons given above and the search required for any of the Groups I-IV are distinct and separate searches, restriction for examination purposes as indicated is proper.

Claim 1 is generic to a plurality of disclosed patentably distinct species comprising:

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<b>INERT MEDIUM</b>	<b>INHIBITORS</b>
hollow fiber	interleukin 1 receptor antagonist
microporous beads	transforming growth factor- $\beta$
cellulose-based fiber	interleukin 4
flat or pleated membrane	interleukin 10
silica-based particle	soluble receptors for interleukin 1
<b>BINDING PARTNERS</b>	soluble receptors for interleukin 2
naturally occurring	soluble receptors for interleukin 4
produced recombinantly	soluble receptors for interleukin 6
fragment of naturally occurring	soluble receptors for interleukin 7
fragment of recombinantly produced	interferon- $\gamma$
monoclonal antibody	tumor necrosis factor $\alpha$
fragment of monoclonal antibody	tumor necrosis factor $\beta$

<b>BINDING PARTNERS CONT...</b>	<b>INHIBITORS CONT..</b>
polyclonal antibody	<b>Derived from microorganisms</b>
fragments of polyclonal antibody	complement inhibitors of interleukin 10
synthetic peptide	homologues of interleukin 10
<b>BIOLOGICAL FLUID</b>	soluble receptors for interleukin 1
<input type="checkbox"/> comprises a monoclonal antibody	interferon $\alpha$
binds to the targeted inhibitor	interferon $\beta$
binds to a plurality of inhibitors	interferon $\gamma$

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<input type="checkbox"/> comprises a polyclonal antibody	tumor necrosis factor $\alpha$
binds to the targeted inhibitor	tumor necrosis factor $\beta$
binds to a plurality of inhibitors	
<input type="checkbox"/> comprises a mixture of synthetic peptides	
binds to a targeted inhibitor	

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from each of the groups of **INERT MEDIUM, INHIBITORS, BIOLOGICAL FLUID** and **BINDING PARTNERS**, even though this requirement is traversed. "☐" indicates that if this species is chosen, a subspecies below it must also be chosen.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

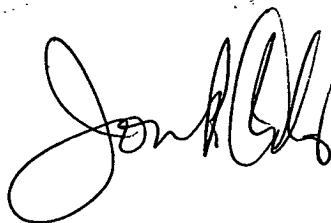
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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Patricia Patten, whose telephone number is (703)308-1189. The examiner can normally be reached on M-F from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

A handwritten signature in black ink, appearing to read 'Jon P. Weber', is positioned above the printed name.

Jon P. Weber, Ph.D.  
Primary Examiner